

CHAPTER 5 REGULATORY COMPLIANCE

5-1. Introduction. This chapter presents guidance on regulatory compliance issues the project team should consider during an OE response project.

5-2. Performance Objectives. The project team's performance objectives for regulatory compliance on OE projects are to:

- a. Execute OE projects in accordance with federal, state and local regulatory requirements; and
- b. Develop planning documents adequately addressing environmental considerations.

5-3. OE Response Regulatory Authorities. The OE response process at Formerly Used Defense Sites (FUDS) is consistent with the CERCLA and the NCP. The determination of the governing laws and regulations for any specific OE project will be made by the District Office of Counsel in consultation with counsel supporting the OE MCX for FUDS, or the appropriate legal representative of the sponsoring agency for work performed by USACE under a different program or authority (e.g., Base Realignment and Closure [BRAC], Installation Restoration Program [IRP], or Work for Others). EP 1110-1-18 provides an overview of the legal authorities governing OE response actions.

5-4. Applicable or Relevant and Appropriate Requirements. The project team should consider applicable or relevant and appropriate requirements (ARARs) under federal or state laws to the extent practicable considering the urgency of the situation and the scope of the response. Therefore, ARARs should be considered prior to selecting the most suitable OE response for a particular site. EP 1110-1-18 provides additional information regarding ARARs on OE response actions.

5-5. Environmental Considerations. EP 1110-1-18 provides a discussion of environmental considerations that should be addressed by the project team before and during an OE response action. Summary tables of environmental laws and regulations as well as DOD Directives, Instructions and Regulations relevant to OE response actions are also provided.

5-6. Environmental Survey. Prior to the start of on-site activities, an environmental survey will be conducted jointly by the contractor and the CO/CO Representative (COR) or other government personnel. The purpose of the environmental survey is to identify any wetlands, endangered and protected species or habitats, and cultural or historical resource areas. The contractor will prepare an Environmental Report including a layout plan which shows the current condition of trees, shrubs and grassy areas immediately adjacent to the site work areas, storage

areas, and access routes. Both the contractor and CO will sign this report prior to the start of on-site activities upon mutual agreement as to its accuracy and completeness.

5-7. Environmental Protection Plan. The project team should review the Environmental Protection Plan (EPP) included as part of the Work Plan. The EPP should provide details of the approach, methods, and operational procedures to be employed at a project site to minimize pollution, protect and conserve natural resources, restore damage and control noise and dust within reasonable limits.

a. Contents. The project team should ensure that the EPP contains the elements described in the following paragraphs. Attachment 5-1 is an EPP review checklist.

(1) A list of potential ARARs should be provided as well as an initial determination as to their actual applicability to the project. The procedure by which ARARs will be identified and complied with during field investigation activities should be described. The EPP should also note that evaluation of ARARs is an iterative process to be performed throughout the life of the project, particularly when evaluating and recommending an appropriate removal response.

(2) The EPP should detail the identification and location of, as well as provide procedures to protect and/or mitigate the impact to, the following:

- (a) Endangered or protected species;
- (b) Cultural or historical resources;
- (c) Wetlands;
- (d) Water resources;
- (e) Coastal zones;
- (f) Trees and shrubs that will be removed within the project site; and
- (g) Existing waste disposal sites within the project site.

(3) The EPP should discuss the environmental protection strategy which describes the potential for occurrence of adverse impacts and the protective, avoidance or mitigative actions the contractor will take in the following areas:

- (a) Land areas affected by the work;
- (b) Work site;
- (c) Storage areas;

- (d) Temporary facilities;
 - (e) Access routes;
 - (f) Trees and shrubs protection and restoration;
 - (g) Water resources - control of water used on-site, control of run-on water, and control of run-off water and sediment;
 - (h) Waste disposal - uncontaminated waste, contaminated waste, packaging, labeling, storage and disposal, manifesting and transportation, compliance with 40 CFR 262, subpart b, compliance with Department of Transportation (DOT) shipping regulations;
 - (i) Burning;
 - (j) Dust and emission control;
 - (k) Spill control and prevention;
 - (l) Decontamination and disposal of equipment; and
 - (m) Minimization of areas of disturbance.
- (3) The EPP should also include procedures for post-activity cleanup.

b. Environmental Documentation. The contractor may be required to prepare environmental documentation prior to any field work for Non-Time Critical Removal Actions (NTCRAs). The environmental documentation should conform to the requirements of Army Regulation (AR) 200-2, Environmental Effects of Army Actions. The environmental documentation may be in the form of a Record of Environmental Consideration, Environmental Assessment, Environmental Impact Statement, or EE/CA. The CO will determine the type of environmental documentation required at each site.

ATTACHMENT 5-1
ENVIRONMENTAL PROTECTION PLAN REVIEW CHECKLIST

Project Name: _____
 Project Location: _____
 Design Center POC: _____
 Reviewer's Name and Title: _____
 Date of Review: _____

Y N N/A

Review of the Environmental Protection Plan

The project team should ensure that the Environmental Protection Plan, a chapter to the Work Plan, has been prepared in accordance with the SOW and contract specifications. The project team should ensure that the following items are discussed in the EPP:

- | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|-------|
| 1. Is a list of potential ARARs provided? | _____ | _____ | _____ |
| 2. Is an initial determination provided as to the actual applicability of these ARARs to the project? | _____ | _____ | _____ |
| 3. Is the procedure by which ARARs will be identified and complied with during field investigation activities described? | _____ | _____ | _____ |
| 4. Does the EPP note that evaluation of ARARs is an iterative process to be performed throughout the life of the project? | _____ | _____ | _____ |
| 5. Does the EPP detail the identification and location of, as well as provide procedures and methods to protect and/or mitigate the impacts to, the following: | _____ | _____ | _____ |
| • Endangered or protected species? | _____ | _____ | _____ |
| • Cultural or historical resources? | _____ | _____ | _____ |
| • Wetlands? | _____ | _____ | _____ |
| • Water resources? | _____ | _____ | _____ |
| • Coastal zones? | _____ | _____ | _____ |

	Y	N	N/A
• Trees and shrubs that will be removed within the project site?	_____	_____	_____
• Existing waste disposal sites within the project site?	_____	_____	_____
6. Does the EPP include a description of the joint environmental survey conducted prior to the start of any on-site work by the contractor and CO/COR or other government personnel?	_____	_____	_____
7. Does the EPP include an environmental protection strategy describing the potential for occurrence of adverse impacts and the protective or avoidance actions the contractor will take in the following areas:			
• Land areas affected by the work?	_____	_____	_____
• Work site?	_____	_____	_____
• Storage areas?	_____	_____	_____
• Temporary facilities?	_____	_____	_____
• Access routes?	_____	_____	_____
• Trees and shrubs protection and restoration?	_____	_____	_____
• Water resources:			
– Control of water used on-site?	_____	_____	_____
– Control of run-on water?	_____	_____	_____
– Control of run-off water and sediment?	_____	_____	_____
• Waste disposal:			
– Uncontaminated waste?	_____	_____	_____
– Contaminated waste?	_____	_____	_____
– Packaging, labeling?	_____	_____	_____
– Storage and disposal?	_____	_____	_____
– Manifesting and transportation?	_____	_____	_____
– Compliance with 40 CFR 262, subpart b?	_____	_____	_____
– Compliance with DOT shipping regulations?	_____	_____	_____

	Y	N	N/A
• Burning?	_____	_____	_____
• Dust and emission control?	_____	_____	_____
• Spill control and prevention?	_____	_____	_____
• Decontamination and disposal of equipment?	_____	_____	_____
• Minimization of areas of disturbance?	_____	_____	_____
8. Does the EPP describe procedures for post-activity clean-up?	_____	_____	_____
9. Does the EPP include a requirement for the appropriate environmental documentation as specified in the SOW by the CO?	_____	_____	_____